

ORDER NO. 2844

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Tony Hammond, Vice Chairman;
Mark Acton; and
Nanci E. Langley

Competitive Product Prices
Global Expedited Package Services 5 Contracts
Negotiated Service Agreements

Docket No. MC2016-15

Competitive Product Prices
Global Expedited Package Services 5 Contracts (MC2016-15)
Negotiated Service Agreement

Docket No. CP2016-20

ORDER ADDING GLOBAL EXPEDITED PACKAGE SERVICES 5 CONTRACTS TO
THE COMPETITIVE PRODUCT LIST
AND APPROVAL OF DESIGNATION AS BASELINE AGREEMENT

(Issued November 25, 2015)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Global Expedited Package Services 5 (GEPS 5) Contracts to the competitive product list.¹ For the reasons discussed below, the Commission approves the Request.

¹ Request of the United States Postal Service to Add Global Expedited Package Services 5 Contracts to the Competitive Products List, and Notice of Filing (Under Seal) of Contract and Application for Non-Public Treatment of Materials Filed Under Seal, November 16, 2015 (Request).

II. BACKGROUND

On November 16, 2015, in accordance with 39 U.S.C. § 3642 and 39 C.F.R. §§ 3020.30-.35, the Postal Service filed the Request, supporting documents, and the negotiated service agreement (Agreement) it seeks to have designated as the baseline agreement for the GEPS 5 Contracts product. In the Request, the Postal Service asserts that the GEPS 5 Contracts product is a competitive product that establishes rates “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). *Id.* at 1-2. The supporting documents include a copy of the Agreement, a copy of Governors’ Decision No. 11-6,² proposed Mail Classification Schedule (MCS) language, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. § 3633(a), and financial workpapers. In addition, the Postal Service submitted an application for non-public treatment of materials requesting that unredacted portions of the Agreement, customer-identifying information, and related financial information remain under seal. Request, Attachment 6.

The Agreement is intended to take effect “no later than thirty (30) days, after receiving the approval of the entities that have oversight responsibilities for the USPS.” Request, Attachment 4 at 3. It is set to expire one calendar year from its effective date. *Id.*

In Order No. 2823, the Commission provided public notice of the Postal Service’s filing; established the two instant dockets; appointed a Public Representative; and provided an opportunity to comment.³

² *Id.*, Attachment 2.

³ Order No. 2823, Notice and Order Concerning the Addition of Global Expedited Package Services 5 Contracts to the Competitive Product List, November 17, 2015.

III. COMMENTS

The Public Representative filed comments on November 24, 2015.⁴ No other comments were received.

Based upon a review of the Postal Service's filing, including the information filed under seal with the Commission, the Public Representative concludes that the "Postal Service's request to add GEPS 5 Contracts to the competitive product list is appropriate." *Id.* at 3. With respect to compliance with 39 U.S.C. § 3633(a), the Public Representative states that the "negotiated prices in the proposed GEPS 5 contract ... should generate sufficient revenues to cover costs, as well as exceed the minimum cost coverage approved in Governors' Decision No. 11-6." *Id.* However, the Public Representative notes her concern with the ability of the GEPS 5 Contracts to comply with 39 U.S.C. § 3633(a)(2) because the contract has a modest projected cost coverage. *Id.* She contends that shifts in volume distribution could cause costs to exceed revenues, and although the financial model allows for certain cost adjustments based on contingency factors, the "provided documentation does not contain solid enough justification for assigning the particular values to these contingency factors." *Id.*

Further, the Public Representative points out that the Postal Service fails to "make clear whether it is designating the contract subject of this docket as the baseline agreement for the functional equivalency comparisons with future GEPS 5 contracts" and suggests that the Postal Service provide additional clarification. *Id.* at 4.

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the Agreement, the supporting data filed under seal, and the Public Representative's comments.

Product list requirements. The Commission's statutory responsibilities when evaluating the Request include assigning the GEPS 5 Contracts product to either the

⁴ Public Representative Comments on Postal Service Request to Add Global Expedited Package Services 5 Contracts to the Competitive Product List, November 24, 2015 (PR Comments).

market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.34. Before adding a product to the competitive product list, the Commission must determine that the Postal Service does not exercise sufficient market power that it can effectively set the price of the product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. See 39 U.S.C. § 3642(b)(1). In addition, the Commission must consider the availability and nature of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. §§ 3020.32(f)-(h).

The Postal Service states that it does not maintain a position of dominance in the market for postal services of the kind provided under the Agreement. Request, Attachment 1 at 2-3. This product would be the first of its kind in grouping Priority Mail International, Priority Mail Express International, First-Class Package International Service, and Commercial e-Packet services, products which have been previously classified as competitive products. *Id.* The Postal Service states that other private sector competitors offer similar delivery services and that the customer requested this specific product grouping as a “solution for improving ease of use and customer satisfaction.” *Id.*, Attachment 1 at 3. The Postal Service contends that the impact on small businesses will be positive because a GEPS 5 agreement will allow the Postal Service to “more quickly provide ... small businesses access to pricing incentives that will help them reduce their own cost of doing business.” *Id.*, Attachment 1 at 4.

The Commission finds that the Postal Service does not exercise sufficient market power that it can effectively set the price of the proposed product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. This finding is supported by the fact that the GEPS 5 Contracts product is a bundling of existing competitive product offerings. The availability of other private sector providers also

supports this conclusion. The contract partner requested the specific grouping of products and it, along with the Public Representative, supports the addition of the GEPS 5 Contracts product to the competitive product list. Further, there is no evidence of an adverse impact on small businesses. For these reasons, having considered the relevant statutory and regulatory requirements and the Postal Service's supporting justification, the Commission finds that the GEPS 5 Contracts product is appropriately classified as competitive and adds it to the competitive product list.

Product list. The Commission added GEPS 1 Contracts, GEPS 2 Contracts, GEPS 3 Contracts, and GEPS 4 Contracts to the competitive product list by operation of Order Nos. 86, 290, 503, and 657, respectively.⁵ The Postal Service states that the proposed classification change adding GEPS 5 Contracts to the MCS is consistent with the requirements of 39 U.S.C. § 3642 and proposes conforming revisions to MCS section 2510.3, which covers GEPS Contracts. *Id.* at 5-6, and Attachment 3.

Cost considerations. Because the Commission finds GEPS 5 Contracts is a competitive product, the Postal Service must also show that the Agreement covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the Agreement exceeds its attributable costs, the Agreement is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if the Agreement covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Request includes a certified statement that the Agreement complies with the requirements of 39 U.S.C. § 3633(a). Request, Attachment 5. In addition, the Postal Service filed supporting revenue and cost data showing that the Agreement is expected

⁵ See, *respectively*, Docket No. CP2008-5; Docket No. CP2009-50; Docket Nos. MC2010-28 and CP2010-71; and Docket Nos. MC2010-28 and CP2011-54.

to cover its costs. Based on its review of the record, the Commission finds that the rates, during the first year of the Agreement, should cover the Agreement's attributable costs. 39 U.S.C. § 3633(a)(2). For this reason, the Commission concludes that the Agreement should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, the Commission finds that the Agreement is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). See *also* 39 C.F.R. § 3015.7(c).

The Commission notes that the cost coverage for the Agreement is close to the threshold set in Governors' Decision No. 11-6, a concern also raised by the Public Representative. PR Comments at 3. Although the modest cost coverage of the Agreement may result in concerns over its ability to cover costs over the term of the Agreement, Article 12 allows the Postal Service to terminate the agreement with 30 days' notice. Request, Attachment 4 at 3. The Commission expects the Postal Service to exercise that provision should the Agreement fail to cover its costs. Further, although modest, the Agreement's cost coverage falls within the range established in Governors' Decision 11-6. The Commission will review the Agreement's cost coverage and the contribution of competitive products as a whole to the Postal Service's institutional costs in the Commission's Annual Compliance Determination to ensure that they continue to comply with 39 U.S.C. § 3633(a). In light of the cost coverage, if the Postal Service seeks to renew this Agreement, it shall file updated financial workpapers reflecting actual cost coverage when seeking renewal.

Accordingly, a preliminary review of the Agreement indicates that it is consistent with section 3633(a).

Baseline agreement. The Commission designates the Agreement as the baseline agreement for the GEPS 5 Contracts product. The Commission finds the reference to the Agreement as the baseline agreement in the proposed MCS language to be sufficient in the present matter, however, the Commission agrees with the Public

Representative that the Postal Service should clearly identify the baseline agreement in future requests. Following current practice, in any future request to add a negotiated service agreement to the GEPS 5 Contracts product, the Postal Service shall identify all significant differences between the new negotiated service agreement and the baseline agreement. Significant differences include terms and conditions that impose new obligations or new requirements on any party to the negotiated service agreement. The docket referenced in the caption of the request should be Docket No. MC2016-15. In conformity with the current practice, a redacted copy of Governors' Decision 11-6 should be included with the request.

Effective date/term. By the Agreement's terms, the Postal Service will notify the customer of the effective date of the contract within 30 days after the date that the Commission issues all necessary regulatory approvals. *Id.* The contract will expire one year after the effective date of the Agreement, unless either party terminates the Agreement earlier. *Id.*

Follow-up submissions. The Postal Service shall promptly notify the Commission of the effective date of the Agreement. If the instant contract is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission. Within 30 days after the instant contract terminates, the Postal Service shall file costs, volumes, and revenues disaggregated by weight and country group associated with the Agreement, including any penalties paid.

In conclusion, the Commission approves GEPS 5 Contracts as a new product and designates the Agreement as the baseline agreement for the GEPS 5 Contracts. The revision to the competitive product list appears below the signature of this Order and is effective immediately.

V. ORDERING PARAGRAPHS

It is ordered:

1. Global Expedited Package Services 5 (MC2016-15 and CP2016-20) is added to the competitive product list as a new product under Negotiated Service Agreements, International. Revisions to the competitive product list and the Mail Classification Schedule appear below the signature of this Order and are effective immediately.
2. The Postal Service shall promptly notify the Commission of the effective date of the Agreement and if the Agreement terminates earlier than scheduled.
3. If the Postal Service seeks to renew the agreement, it shall file actual cost information with its request to the Commission.
4. Within 30 days of the expiration or termination of the Agreement, the Postal Service shall file costs, volumes, and revenues disaggregated by weight and country group associated with the contract, including any penalties paid.
5. The draft Mail Classification Schedule will be modified as discussed in the body of this Order, and as shown below the signature line of this Order.

By the Commission.

Stacy L. Ruble
Secretary

CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 C.F.R. part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission's order in Docket Nos. MC2016-15 and CP2016-20. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Part B—Competitive Products **2000 Competitive Product List**

Negotiated Service Agreements*

Outbound International*

Global Expedited Package Services (GEPS) Contracts

GEPS 5

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part B—Competitive Products **2000 Competitive Product List**

Negotiated Service Agreements*

Outbound International*

Global Expedited Package Services (GEPS) Contracts

GEPS 5

2500 Negotiated Service Agreements

2510 Outbound International

2510.3 Global Expedited Package Services (GEPS) Contracts

2510.3.1 Description

- a. Global Expedited Package Services (GEPS) Contracts provide incentives for Priority Mail Express International (PMEI) ~~and/or Priority Mail International (PMI)~~, Commercial ePacket (CeP) and/or First-Class Package International Service (FCPIS) for all destinations served by ~~Priority Mail Express International and Priority Mail International~~ each respective product.
- b. Preparation requirements are the same as for ~~all Priority Mail Express International and/or Priority Mail International~~ published rate shipments with the following exceptions:

- The mailer may be required to prepare specific shipments according to country specific requirements or instructions furnished in the mailer's negotiated service agreement.

2510.3.2 Size and Weight Limitations

First-Class Package International Service & Commercial E-Packet Service Packages (Small Packages)

	<u>Length</u>	<u>Height</u>	<u>Thickness</u>	<u>Weight</u>
<u>Minimum</u>	<u>Large enough to accommodate postage, address, and other required elements on the address side</u>			<u>none</u>
<u>Maximum</u>	<u>24 inches</u>			<u>4 pounds</u>
	<u>Length plus height plus thickness of 36 inches</u>			

Rolls

	<u>Length</u>	<u>Length plus twice the diameter</u>	<u>Weight¹</u>
<u>Minimum</u>	<u>4 inches</u>	<u>6.75 inches</u>	<u>none</u>
<u>Maximum</u>	<u>36 inches</u>	<u>42 inches</u>	<u>4 pounds</u>

Notes

1. Country-specific restrictions apply as specified in the International Mail Manual.

2510.3.3 Minimum Volume or Revenue Requirements

Mailers must commit to tendering varying minimum volumes or a specified amount of revenue ~~postage of Priority Mail Express International service, Priority Mail International service or both,~~ on an annualized basis. The mailer is required to meet the minimum volume or weight requirements in effect for manifest mailing as specified by the Postal Service.

2510.3.4 Price Categories

The following price categories are available for the product specified in this section:

- GEPS – First-Class Package International Service
- GEPS – Commercial ePacket

2510.3.5 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

- International Ancillary Services (2615)
 - International Certificate of Mailing: PMI Flat Rate Envelope and FCPIIS only (2615.1)
 - Outbound Competitive International Registered Mail: PMI Flat Rate Envelope and FCPIIS only (2615.2)

- International Insurance: PMI and PMEI only (2615.5)

- Delivery Tracking
 - Offered with Commercial ePacket Service to certain destinations.
- Chargeback for Duties and Taxes
 - At the mailer's request, for certain destinations for which the Postal Service has made arrangements with the destination country postal operator, the Postal Service may offer destination country duty and taxes chargeback service, through which custom duties and taxes are paid by the mailer in lieu of the recipient.

2510.3.6 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- GEPS 5
Baseline Reference
Docket Nos. MC2016-15 and CP2016-20
PRC Order No. 2844, November 25, 2015
Included Agreements
CP2016-20, expires TBD